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11 IN THE UNITED STATES BANKRUPTCY COURT  
12 FOR THE EASTERN DISTRICT OF WASHINGTON

13 In re:

14 KING MOUNTAIN TOBACCO  
COMPANY, INC.,

15 Debtor.  
16

Case No. 20-01808-WLH11  
Chapter 11

**THE UNITED STATES'  
OPPOSITION TO DEBTOR'S  
DISCLOSURE STATEMENT**

17 The United States of America, on behalf of the Department of the Treasury,  
18 Alcohol and Tobacco Tax and Trade Bureau (the "TTB"), hereby files its  
19 opposition to Debtor's Disclosure Statement (ECF No. 155).  
20

Opposition to  
Disclosure Statement  
(Case No. 20-01808-WLH11)

1       The primary purpose of a § 1125 disclosure statement is to provide adequate  
2 information to the holders of claims or interests in soliciting their acceptance or  
3 rejection of a proposed plan. “Adequate information” is statutorily defined:  
4 “information of a kind, and in sufficient detail, as far as is reasonably practicable in  
5 light of the nature and history of the debtor and the condition of the debtor’s books  
6 and records, . . . , that would enable a hypothetical reasonable investor typical of  
7 holders of claims or interests of the relevant class to make an informed judgment  
8 about the plan.” 11 U.S.C. § 1125(a)(1).

9       The adequacy of disclosure statement information is evaluated using  
10 numerous factors, including, as relevant here whether it provides: a complete  
11 description of the available assets and their value; a liquidation analysis setting  
12 forth the estimated return that creditors would receive under Chapter 7;  
13 information regarding the future management of the debtor, including the amount  
14 of compensation to be paid to any insiders; an estimate of all administrative  
15 expenses, including attorney’s fees and accountant’s fees; the collectibility of any  
16 accounts receivable; information relevant to the risks being taken by the creditors  
17 and interest holders; the actual or projected value that can be obtained from  
18 avoidable transfers; the existence, likelihood and possible success of  
19 nonbankruptcy litigation; and the relationship of the debtor with affiliates. *See In*  
20 *re Reilly*, 71 B.R. 132, 134-35 (Bankr. D. Mont. 1987). *See generally* 7 COLLIER

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1 ON BANKRUPTCY, ¶ 1125.02[2] (Richard Levin & Henry J. Sommer eds., 16th  
2 ed.). Even if previously approved by the court, the adequacy of disclosure may be  
3 revisited at plan confirmation. *See Official Comm. of Unsecured Creditors v.*  
4 *Michelson (In re Michelson)*, 141 B.R. 715 (Bankr. E.D. Cal. 1992).

5 Here, the Disclosure Statement does not provide adequate information in the  
6 following areas and Debtor should be required to supplement the Disclosure  
7 Statement prior to approval. The United States has provided the following  
8 additional requests for information to Debtor and Debtor has indicated it will work  
9 to address the requests.

10 1. The Disclosure Statement Does Not Provide Adequate Information About  
11 When Debtor Will Be Entitled To Receive Funds From The Qualified  
Escrow Accounts.

12 The Disclosure Statement does not provide sufficient information regarding  
13 the Qualified Escrow Accounts that Debtor is required to maintain as a  
14 nonparticipating manufacturer under the Master Settlement Agreement for  
15 tobacco-related claims.<sup>1</sup>

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17 <sup>1</sup> Many state statutes require that tobacco manufacturers who have not signed the Master  
18 Settlement Agreement (nonparticipating manufacturers or NPMs) place funds in escrow as a  
19 form of self-insurance against tobacco-related claims. *See, e.g.*, Wash. Rev.Code  
20 § 70.157.020(b); Va. Code Ann. §§ 3.1–336.1 & 3.1–336.2. Escrow statutes generally specify  
that for each qualifying unit of tobacco sold, NPMs must make a flat-fee payment into an escrow  
fund. The NPMs earn interest on the escrow account balances. Pursuant to statute, the money in  
the escrow account may be released only: (1) to pay a judgment or settlement; (2) as a refund to  
the NPM for overpayment to the account; or (3) as a refund to the NPM after the funds have

1 The bulk of the payments under the proposed plan are to come from the  
2 funds currently placed in the various Qualified Escrow Accounts for the benefit of  
3 various states. However, the Disclosure Statement does not disclose:

- 4 a. When funds will become available and in what amounts;
- 5 b. Information about potential judgments/settlements to be paid out the  
6 Qualified Escrow Accounts and how much will become available in light  
7 of possible judgments; and
- 8 c. Copies of the Escrow agreements.

9 The requested information above is necessary for a creditor to assesses the  
10 liquidation analysis, to evaluate the risk, and to make an informed judgment about  
11 the proposed plan.

12 2. The Disclosure Statement Does Not Provide Adequate Information About  
13 Debtor's Potential Recovery From Related Entities.

14 The Disclosure Statement lists about \$13M owed to Debtor from affiliated  
15 entities (ECF No. 155 at 10), but provides no specific information about potential  
16 recovery of those funds:

- 17 a. Wheeler Logging (about \$4.2M) “no longer has any significant sources  
18 of revenue;”

19  
20 \_\_\_\_\_  
been in the account for 25 years. *See King Mountain Tobacco Co. v. McKenna*, 768 F.3d 989,  
992 (9th Cir. 2014); *Star Sci. Inc. v. Beales*, 278 F.3d 339, 346 (4th Cir. 2002).

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- 1 b. Wheeler Rock Products (about \$1.5M) “has only recently become  
2 profitable, and it shall repay King Mountain for its Affiliate Receivable  
3 over the course of the next five years;”
- 4 c. Wheeler Cattle (about \$1.9M) “repayment of Wheeler Cattle’s respective  
5 Affiliate Payable is dependent is cattle sales;”
- 6 d. Mountain Tobacco Distributing Inc. (about \$4.7M) “Mountain Tobacco  
7 has no physical assets. ... This Affiliate Receivable is ultimately not  
8 collectible;”
- 9 e. Wheeler Fuel Distribution (about \$249K) “Wheeler Fuel shall repay  
10 King Mountain for its Affiliate Receivable over the course of the next  
11 four years;” and
- 12 f. Wheeler Pawn Stars (about \$282K) “Wheeler Pawn Stars shall repay  
13 King Mountain for its Affiliate Receivable over the course of the next  
14 four years.”

15 ECF No. 155 at 9-10, 14-15.

16 Debtor valued affiliated entity receivables at over \$13M, and Debtor’s  
17 cursory explanation of the affiliates’ financial condition, lack of collectability,  
18 and/or repayment schedule without detail is insufficient.

19 Debtor has access to these entities’ books and records and should be able to  
20 provide accurate financial data about the affiliate entities’ assets and recovery

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1 potential in sufficient detail to allow a creditor to make an informed judgment  
2 about the proposed plan, including:

- 3 a. Consolidated financial statements for 2020 that show Debtor's entire  
4 business enterprise, including the affiliate entities with which Debtor  
5 conducts business;
- 6 b. A description of Debtor's business relationship with all affiliate entities  
7 on a going forward and post-confirmation basis, specifically setting forth  
8 whether Debtor intends to sell tobacco products to these entities or to buy  
9 goods produced by them or any other on-going business relationship;
- 10 c. Financial statements for affiliate entities that Debtor intends to have on-  
11 going business transactions;
- 12 d. Financial statements for affiliate entities where Debtor paid start-up  
13 costs; and
- 14 e. For any affiliate entities that owe Debtor on a pre-confirmation  
15 receivable, all documents that memorialize any repayment terms and  
16 financial statements for these affiliates to determine whether they are  
17 capable of making payments.

18 Additionally, the Disclosure Statement does not identify potential avoidance  
19 actions (including those against affiliate entities) and does not state a projected  
20 value that can be obtained from such actions.

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1 3. The Disclosure Statement Does Not Provide Adequate Information About  
2 Compensation To Insiders.

3 The Disclosure Statement has not disclosed the identity of any insider that  
4 will be employed or retained by the reorganized debtor, and the nature of any  
5 compensation for such insider, as required under 11 U.S.C. § 1129(a)(5)(B). The  
6 Disclosure Statement does indicate that Debtor's shareholder Ms. Wheeler does  
7 not "draw a salary from the Debtor" (ECF No. 155 at 15), but does not disclose the  
8 nature of any compensation in the future.

9 WHEREFORE, the United States respectfully requests that the Court deny  
10 approval of the Debtor's Disclosure Statement, as it fails to comply with the  
11 requirements of 11 U.S.C. § 1125.

12 DATED: February 1, 2021.

13 DAVID A. HUBBERT  
14 Deputy Assistant Attorney General

15 /s/ Yen Jeannette Tran

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